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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

ALVIN LEE WOODS,

Defendant and Appellants.

B207290

(Los Angeles County
Super. Ct. No. MA040246)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Leslie E. Brown, Judge. Affirmed.

Law Offices of Anthony D. Zinnanti, under appointment by the Court of Appeal,
for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Assistant Attorney
General, Pamela C. Hamanaka, Assistant Attorney General, Roberta L. Davis and Tita
Nguyen, for Plaintiff and Respondent.

Alvin Lee Woods appeals from the judgment entered after a jury convicted him of assault with a deadly weapon and inflicting corporal injury on a cohabitant. We hold that there was no evidence to require an instruction on the lesser included offense of simple assault and that any error in allowing evidence of Woods's misdemeanor spousal abuse conviction for impeachment purposes was harmless.

FACTS AND PROCEDURAL HISTORY

Alvin Lee Woods was charged with assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)) and inflicting corporal injury to a cohabitant (Pen. Code, § 273.5),¹ after an eyewitness called the police to report that he had seen Woods attack Janet McDonald with a knife outside of a Lancaster fast food restaurant. McDonald and Woods, who had been dating for a year, were homeless and lived in a shelter. According to McDonald, they were arguing because McDonald wanted to return home. Woods, who had been drinking, picked up a five-inch long, serrated-edged steak knife, and came toward McDonald with it. Woods waived the knife toward McDonalds's chest area in a slashing motion. McDonald screamed at Woods to put down the knife. Instead, he struck her left bicep with the knife. The blade broke on contact, however, leaving a four to five inch long raised scratch mark.

Eyewitness Terry Ritz saw McDonald walking away from Woods, then saw Woods follow her "in a threatening manner," with his fists "balled up." Ritz tried to step between the two, but Woods pushed him aside and came at McDonald with the knife. McDonald tried to duck, but Woods raised his hand, swung the knife down, and struck McDonald. When the knife broke, Woods ran off with the handle, and Ritz followed. Woods then tossed the knife handle away. Ritz phoned 911 for help, and sheriff's deputies arrived soon after.

Deputies arrested Woods. They saw the four to five inch long raised scratch on McDonalds's left arm, along with a few other scratches on her right arm. McDonald said

¹ All further undesignated section references are to the Penal Code.

she did not need a doctor, and that she did not want Woods to go to jail and would not cooperate with any prosecution. She eventually broke down in tears and told the deputies what had happened. Deputies recovered pieces of the broken blade, which were introduced in evidence and shown to the jury. The handle was never found.

McDonald testified that Woods once struck her in the head with a stone. On another occasion, a dispute over what McDonald cooked for dinner ended with Woods holding a knife up to her and saying he “should just kill you and get it over with.” McDonald was able to wrestle the knife away, however.

Woods denied having a knife or in any way trying to attack McDonald. Instead he testified that he suffered from epileptic seizures following a stroke some years earlier, and that he had a seizure and grabbed on to McDonald, scratching her arm. Woods had a 2003 misdemeanor conviction for spousal abuse and a 1985 conviction for attempted murder. Over a defense objection, the trial court said Woods could be impeached with both convictions. Evidence of those convictions came out from Woods preemptively during his own direct examination.

Woods contends the trial court should have instructed the jury on the lesser included offense of simple assault and that admission of the misdemeanor conviction was error.

DISCUSSION

1. A Simple Assault Instruction Was Not Required

Assault with a deadly weapon is an assault committed with either a deadly weapon or any means of force likely to produce great bodily injury. (*People v. Carmen* (1951) 36 Cal.2d 768, 775, disapproved on another ground by *People v. Flannel* (1979) 25 Cal.3d 668, 685.) Therefore a simple assault under section 240 is a lesser included offense of assault with a deadly weapon under section 245, subdivision (a)(1). (*People v. McDaniel* (2008) 159 Cal.App.4th 736, 747 (*McDaniel*).) Although Woods did not request a simple assault instruction, the trial court was obliged to give one if there was

substantial evidence that a simple assault occurred. (*Ibid.*) Woods contends the trial court erred because there was such evidence. We therefore examine the record to see whether a reasonable jury could have found that Woods committed only a simple assault and not assault with a deadly weapon. (*Id.* at p. 748.)

Woods contends there was evidence of a simple assault for two reasons:

- (1) because the knife broke on contact, it could not have been a deadly weapon; and
- (2) McDonald was impeached with her preliminary hearing testimony that the scratch on her arm was caused when Woods grabbed her with his hands, providing evidence that he did not use the knife to commit his assault.

A deadly weapon may be any object, instrument, or weapon used so as to be capable of producing, and likely to produce, death or great bodily injury. When an object such as a knife is not inherently deadly or dangerous, the jury may consider the nature of the weapon, how it was used, and any other relevant fact. Although physical contact and injury are not required for conviction, if injuries result, their extent and location are also relevant factors. (*People v. McCoy* (1944) 25 Cal.2d 177, 188; *People v. Beasley* (2003) 105 Cal.App.4th 1078, 1086.) Under this test, our appellate courts have held that objects such as screwdrivers (*People v. Simons* (1996) 42 Cal.App.4th 1100, 1107) and sharpened pencils (*People v. Page* (2004) 123 Cal.App.4th 1466, 1471-1472) may be deadly weapons.

As noted, assault with a deadly weapon does not require that a blow have been struck. Once Woods came at McDonald with the knife raised in a threatening manner, his assault was complete. (*People v. McCoy, supra*, 25 Cal.2d at p. 189.) Woods does not contend that the knife he used was not a deadly weapon regardless of its physical integrity, and there is little doubt that a steak knife in sound physical condition is a deadly weapon when used to stab someone. (See *People v. Pruett* (1997) 57 Cal.App.4th 77, 85-86 [nearly all knives have sharp edges and points designed to cut things and are too often used to cut and kill people].)

Woods contends that because the blade broke when it made contact with McDonald, the knife was physically incapable of serving as a deadly weapon. The only

decision he cites to support this contention is *People v. Barrios* (1992) 7 Cal.App.4th 501, which held that a common bread knife that had not been modified into a stabbing instrument was not a dirk or dagger under the law that banned the concealed possession of those devices. *Barrios* does not suggest that a steak knife cannot be an instrument by which an assault with a deadly weapon is committed. The decision is similarly inapplicable to the issue whether a steak knife that breaks when used to stab someone is a deadly weapon under section 245, subdivision (a)(1).

At bottom, Woods asks us to speculate that there was evidence the knife was incapable of ever inflicting a deadly wound because the blade broke from one particular blow at one particular angle. Woods put on no evidence concerning the condition of the knife, and no photos of the knife are in the appellate record. The jury saw the broken pieces and was free to conclude that the knife would not have broken had Woods used a different knife stroke, either by way of a straight thrust or a slashing motion. The jury could have also concluded that even in its broken condition, the blade pieces might have still been used to inflict deadly wounds. In short, there is no evidence suggesting the knife was too dull or was lacking a point capable of cutting or puncturing McDonald's skin had it made contact with her body in a different area or by way of a different knife stroke. As a result, the trial court was not under a duty to instruct on simple assault.

The same is true as to evidence that the scratch marks on McDonald's arm came from Woods's hands, not from a knife. At trial, McDonald was impeached with portions of her preliminary hearing testimony where she denied that Woods ever struck her with the knife. Distilled, McDonald was impeached with testimony that she told Woods to put down the knife, that he grabbed her from behind and scratched her arm with his fingernails, and that the knife then fell to the ground. While this testimony is evidence that Woods did not land a knife blow, it still shows that he came at McDonald with a

knife. As mentioned above, because the knife was a deadly weapon, his assault with that weapon was complete at that moment. (*People v. McCoy*, *supra*, 25 Cal.2d at p. 189.)²

2. *Any Error From the Impeachment Evidence Was Harmless*

Woods contends that his convictions of both assault with a deadly weapon and inflicting corporal injury on a cohabitant must be reversed because the trial court erred when it allowed the jury to consider Woods's earlier misdemeanor spousal abuse conviction as evidence to impeach his credibility.

We need not address whether the court erred by admitting evidence of a misdemeanor conviction for this purpose, however. Assuming for discussion's sake only that error occurred, we will affirm if the error was harmless under the *Watson*³ standard of review: that a different result was not reasonably probable. Although Woods contended he did not attack McDonald at all, but instead involuntarily grabbed her during an epileptic seizure, both McDonald and eyewitness Ritz testified that Woods aggressively attacked McDonald. There was also evidence that on previous occasions Woods hit McDonald with a rock and threatened her with a knife, and that he had a conviction for attempted murder. Woods does not challenge that evidence on appeal. Based on all this, we hold that evidence of his misdemeanor spousal abuse conviction did not reasonably likely tip the result in favor of finding that he in fact assaulted and injured McDonald.⁴

² Nor are we persuaded by Woods's reliance on a jury question that it felt "the injury was not necessarily caused by the knife" The jury was considering a deadly weapon personal use allegation (§ 12022, subd. (b)(1)) that was part of the corporal injury count, and its question went to that point. Regardless, the jury found that allegation true and therefore resolved the knife use question against Woods.

³ *People v. Watson* (1956) 46 Cal.2d 818, 836.

⁴ Woods also contends we should reverse due to the prejudicial effect of cumulative error. Because we assume, but do not decide, that only one error occurred, there is no error to cumulate and the claim is rejected.

DISPOSITION

For the reasons set forth above, the judgment is affirmed.

RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

BIGELOW, J.